

## **3-5.000**

# **EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**

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### **3-5.100 Equal Employment Opportunity (EEO) Policy**

It is the policy of the United States Attorneys' Offices (USAOs) and the Executive Office for United States Attorneys (EOUSA) to provide equal opportunity in employment on the basis of merit and to prohibit discrimination because of race, color, religion, sex, age, national origin, disability (physical or mental), sexual orientation or reprisal.

Moreover, the USAOs and the EOUSA wholeheartedly incorporate into this policy the Attorney General's key objectives in the area of equal employment opportunity by:

- Fostering an environment in the USAOs and the EOUSA in which cultural diversity is valued and understood;
- Achieving work force diversity wherever under-representation of minorities, women, and person with disabilities exists; and using innovative approaches to more fully integrate minorities, women and persons with disabilities throughout the USAOs and the EOUSA;
- Holding supervisors and managers strictly accountable for EEO implementation; and
- Providing a work environment that is free of discrimination and harassment; and ensuring that the programs designed to address allegations of discrimination or harassment are responsive to employees' needs and that employees who elect to use such programs are protected from retaliation or reprisal.

Our goal is to promote the full realization of equal employment opportunity through a continuing affirmative action program that will eliminate discrimination based on factors irrelevant to job performance. To achieve this goal, positive action will be taken by management at all levels to: (1) reexamine periodically our personnel policies and methods, recruiting efforts, training programs, as well as management practices, in order to implement necessary changes for the diversification of our work force, and (2) eradicate any internal practice or procedure which denies equality of opportunity to any group or individual on any basis other than merit and fitness. Through affirmative action, opportunities will be provided for all persons to compete equally for employment and advancement to their highest levels of proficiency where individual skills and training are fully utilized.

The continuing support of all staff members will be required for the achievement of the desired results.

### **3-5.101 Policy Statement on Persons with Disabilities**

The USAOs and the EOUSA reaffirm their commitment to recruit and hire qualified persons with disabilities. The USAOs and the EOUSA will continue to promote equal employment opportunity by working to eradicate all non-merit factors of employment that would adversely affect disabled persons.

To accomplish this goal, all levels of management must:

- Ensure that personnel and other internal practices and procedures are executed equitably, and do not deny opportunities to any group of individuals based on non-merit and non-fitness factors;
- provide opportunities that will allow persons with disabilities the chance to compete on an equal basis for advancement to their highest level of proficiency; and
- Ensure that all complaints of discrimination filed by persons with disabilities are handled in a manner so as to eliminate fear of reprisal.

### **3-5.102 Policy Statement on Disabled Veterans**

The USAOs and the EOUSA affirm the policy to recruit and hire qualified disabled veterans, specifically those disabled veterans who are thirty percent (30%) or more disabled. The USAOs and the EOUSA will continue to promote equal employment opportunity by working to eradicate all non-merit factors of employment that would adversely affect disabled veterans.

To accomplish this goal, all levels of management must:

- Ensure that personnel and other internal practices and procedures are executed equitably, and do not deny opportunities to disabled veterans based on non-merit and non-fitness factors;
- Provide opportunities that will allow disabled veterans the chance to compete on an equal basis for advancement to their highest level of proficiency; and
- Ensure that all complaints of discrimination filed by disabled veterans are handled in a manner so as to eliminate fear of reprisal.

### **3-5.103 Policy Statement on Sexual Harassment**

It is the policy of the USAOs and the EOUSA to prohibit sexual harassment in their offices. Sexual harassment is unacceptable conduct in the workplace and will not be condoned. Personnel management within

the USAOs and EOUSA shall be free from prohibited personnel practices, as outlined in the provisions of the Civil Service Reform Act of 1978. All employees shall avoid conduct which undermines these principles.

Sexual harassment is a complex and sensitive issue. It is a form of employee misconduct which undermines the integrity of the employment relationship. Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended. In accordance with the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, (29 C.F.R. §1604.11), unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment debilitates morale and interferes in the work productivity of its victims and other employees. Therefore, behavior of this nature will not be tolerated.

### **3-5.104 Implementation of Affirmative Employment Programs**

In an effort to assist the USAOs and the EOUSA in the implementation of their Affirmative Employment Programs, the Equal Employment Opportunity (EEO) staff develops the plans, procedures and regulations necessary to carry out these programs. The EEO staff prepares the following plans:

- The Affirmative Employment Plan for Minorities and Women;
- The Disabled Veterans Affirmative Action Plan;
- The Affirmative Employment Plan for Disabled Individuals.

*See generally* the EOUSA Resource Manual at 67.

### **3-5.105 Training**

Periodically the EEO staff sponsors specialized training conferences which are offered to both attorney and non-attorney personnel. See the EOUSA Resource Manual at 68.

### **3-5.120 EEOC Responsibilities**

*See* the EOUSA Resource Manual at 69.

### **3-5.130 Racial/Ethnic Codes**

*See* the EOUSA Resource Manual at 70.

### **3-5.140 Employment Review Procedures For Non-Attorneys**

*See* the EOUSA Resource Manual at 71.

### 3-5.150 Employees With Disabilities

It is the policy of the USAOs and the EOUSA to provide equal opportunity for persons with disabilities in all of its programs. This includes training programs, such as workshops and seminars sponsored by the USAOs and the EOUSA, where persons with disabilities who attend may require special accommodations. Effective May 1, 1984, the following statement should be included in all announcements of training sponsored by the Executive Office or any district office:

The EOUSA makes every effort to assure that its training programs are readily accessible to persons with disabilities. Any official nominating a disabled individual for training should contact the office sponsoring the training at least ten (10) working days in advance of the nomination to discuss any special provisions needed to accommodate the disabled nominee(s), e.g., sign language interpreters for the hearing impaired, etc.

### 3-5.200 Processing Complaints of Discrimination

The EOUSA processes two types of complaints that involve allegations of discriminations:

1. Individual and class complaints of employment discrimination and reprisal prohibited by Title VII of the Civil Rights Act of 1964, as amended (discrimination on the basis of race, color, religion, sex, and national origin); the Age Discrimination in Employment Act, (discrimination on the basis of age when the aggrieved individual is 40 years of age or older); the Rehabilitation Act (discrimination on the basis of mental or physical disability); the Equal Pay Act (sex-based wage discrimination) and Department of Justice policy (sexual orientation).
2. Mixed case complaints which are complaints that contain an allegation of employment discrimination related to or stemming from a personnel action that can be appealed to the Merit Systems Protection Board (MSPB).

Both types of complaints are handled in two phases -- the informal complaint stage and the formal complaint stage.

**A. Informal Complaint.** Before a formal complaint may be filed, employees or applicants for employment who feel they have been discriminated against because of race, color, religion, sex, age, national origin, disability (physical or mental), sexual orientation, or reprisal must bring the matter to the attention of an EEO Counselor within 45 calendar days after the action in question. It is the EEO Counselor's responsibility to attempt to resolve the problem informally within 30 calendar days. If the counseling has not been completed within 30 calendar days, the Counselor must notify the complainant, in writing, on the 30th day of the complainant's option either to continue the counseling process or file a formal complaint within 15 calendar days after the notice of final counseling interview has been received by the complainant.

If the matter is a mixed case complaint, the EEO Counselor will explain that the complainant must select either the EOUSA or the MSPB to formally process the complaint or appeal. The EEO Counselor will inform the complainant that attempting an informal resolution does not preclude filing a formal appeal with the MSPB, but that the time limit for filing the appeal with the MSPB remains unchanged. The EEO Counselor will also explain that mixed case complaints are processed in a shorter time frame than Title VII complaints, and mixed case appeals from the EOUSA are to the MSPB instead of EEOC.

Complainants may go directly to an EEO counselor or may call the EEO staff, EOUSA for assignment of a counselor.

**B. Formal Complaint.** If the complainant is not satisfied with the informal resolution, he/she may then file a formal complaint of discrimination. The complaint must be specific, in writing, and must be submitted to the

EEO Assistant Director, Executive Office for United States Attorneys, Equal Employment Opportunity Staff, 10th and Pennsylvania Avenue, N.W., Room 1630, Washington, D.C. 20530, within 15-calendar days from the date the complainant receives the Notice of Final Interview.

If the matter is a mixed case complaint, the complainant must submit a letter acknowledging that the EOUSA is the only forum where the mixed case complaint has been filed.

The complaint is considered filed on the date mailed (post-marked) or on the date of delivery when the complaint is presented (hand delivered) to the EEO staff.

The EEO Assistant Director shall send a written acknowledgment of receipt of the complaint to the complainant, and advise the complainant of all administrative rights and of the right to file a civil action, including the applicable time limits for such filing.

### **3-5.210 Who May File a Complaint**

A complaint of discrimination may be filed by an applicant or any employee. Allegations of discrimination may be based on race, color, religion, sex, age, national origin, disability (physical or mental), sexual orientation, or reprisal. (With reference to age, the aggrieved person must be at least 40 years of age at the time of the matter giving rise to the complaint of discrimination.) The employee has the right to be represented at all levels of the complaint process by a representative of his/her choice.

### **3-5.211 General Guidance on Filing Discrimination Complaints**

**Guidance on filing discrimination complaints can be found in the EOUSA Resource Manual at 72 et seq.**

Responsibilities of the Complainant	EOUSA Resource Manual at 72
Dismissal and Appeal of Complaints	EOUSA Resource Manual at 73
Withdrawing Complaints	EOUSA Resource Manual at 74
Investigation of Individual Employment Discrimination Complaints	EOUSA Resource Manual at 75
On Completion of Investigation	EOUSA Resource Manual at 76
Department of Justice Final Agency Decision	EOUSA Resource Manual at 77
Appeals from the Final Agency Decision	EOUSA Resource Manual at 78
Payment of Costs	EOUSA Resource Manual at 79
Retention of Personnel Records Relative to EEO Complaint Processing	EOUSA Resource Manual at 80

#### **Processing Allegations of Discrimination or Harassment Because of Sexual Orientation**

Precomplaint Counseling	EOUSA Resource Manual at 81
Formal Complaints of Discrimination	EOUSA Resource Manual at 82
Complaint Adjudication Officer (CAO) Review and Decision	EOUSA Resource Manual at 83
Remedies and Relief	EOUSA Resource Manual at 84
Representation and Official Time	EOUSA Resource Manual at 85

<b>Class Action Complaints</b>	EOUSA Resource Manual at 86
Filing of Class Complaint	EOUSA Resource Manual at 87
Acceptance, Rejection or Cancellation of a Class Complaint	EOUSA Resource Manual at 88
Notification and Opting Out	EOUSA Resource Manual at 89
Evidence Concerning the Complaint and Opportunities for Informal Resolution	EOUSA Resource Manual at 90
Hearing	EOUSA Resource Manual at 91
Notification of Class Members of Decision	EOUSA Resource Manual at 92
Corrective Action	EOUSA Resource Manual at 93
 <b>Age Discrimination in Employment Act (ADEA) Complaints</b>	 EOUSA Resource Manual at 94
Mixed Case Complaints	EOUSA Resource Manual at 95
Investigation of Allegations of Discrimination on the Basis	EOUSA Resource Manual at 96
Disability in Federally Conducted Programs	

### **3-5.800 Prevention of Sexual Harassment Contact Persons**

Pursuant to the Attorney General's mandate for the prevention of sexual harassment, each district is required to designate a Prevention of Sexual Harassment Contact Person. Large districts may appoint more than one Contact Person. The purpose of this requirement is to enhance existing program efforts to eliminate sexual harassment by establishing a procedure outside the existing equal employment opportunity and grievance processes.

Districts may not appoint a manager or supervisor as the Contact Person. Appointing a manager may result in a conflict of interest because of the different roles of managers and Prevention of Sexual Harassment Contact Persons. Managers must make decisions and appointing a Contact Person who is a member of management would tend to blur the two functions.

The coordinator for the Prevention of Sexual Harassment Program in the USAOs and the EOUSA is the Legal Counsel's office.